

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1 Home Care Services Consumer Protection

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on April 23, 2018, at the following address:

Office Building # 8
744 P St. Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only if attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you need a language interpreter at the hearing (including sign language), please notify CDSS at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on April 23, 2018.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at [CDSS Public Hearings for Proposed Regulations](http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information) (<http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information>). Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed below. Following the public hearing, copies of the Final Statement of Reasons will also be available at the following address:

CONTACT: California Department of Social Services
Office of Regulations Development
744 P. Street, MS 8-4-192
Sacramento, CA 95814
Tel: (916) 657-2856, Fax: (916) 654-3286
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CHAPTERS

Title 22, Division 15, Chapter 1

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These regulations became effective on January 1, 2018, via an emergency filing. This is now the public comment process.

Current law Assembly Bill (AB) 1217 (Chapter 790, Statutes of 2013) Home Care Services Consumer Protection Act, herein known as “Act,” promotes consumer protection for elderly and disabled individuals who hire private Home Care Aides to come into their homes and provide assistance with activities of daily living. AB 1217, added Chapter 13 to Division 2 of the Health and Safety Code, commencing with Section 1796.10. Section 1796.63 allows for the implementation of any reasonable rules, regulations, and standards as may be necessary or proper to carry out the purpose and intent of the Act. The Act was implemented because there were no laws regulating the licensure of home care services in California.

These regulations implement the Act, which requires licensing and regulation of Home Care Organizations, background checks for licensees, employees and volunteers of Home Care Organizations, background checks for Registered Home Care Aides, and maintenance of the Home Care Aide Registry. Prior to the passage of AB 1217, the home care services industry had not been regulated in California; Home Care Organizations were not required to be licensed, and Home Care Aides were not required to meet any state-level mandated minimum qualifications or screenings. However, as the state’s population continues to age, the demand for this program will continue to increase, and the need for health and safety measures for this population in these emergency regulations is crucial.

Background:

According to the U.S. Census Bureau’s American Community Survey, in 2014, 36 percent of persons 65 and over reported some type of disability (i.e., difficulty in hearing, vision, cognition, ambulation, self-care, or independent living). Some of these disabilities may require assistance to meet important activities of daily living (ADLs). In 2013, 42 percent of home or community-resident persons 65 or older reported difficulty in performing one or more ADLs. According to AARP, nearly 90 percent of persons 65 years or older indicate they want to stay in their home as long as possible. The aging in place movement is likely to grow alongside the aging of the population, and many of these homes will require home care services to help individuals stay in their home.

To assist with the growing population of persons 65 years or older and the aging in place movement, in January 2016, California implemented the Home Care Services Consumer Protection Act which requires licensing and regulation of HCOs, background checks for license applicants and HCAs, and maintenance of the Registry. Prior to implementation, HCOs were not required to be licensed and HCAs were not required to meet any state level mandated minimum qualifications or screenings. Of the HCOs that chose to conduct background checks, training, or other screenings for their caregivers, there was no requirement to use a uniform process and not all of them applied the same standards. As part of the licensing and registration responsibilities, CDSS conducts biennial visits to all licensed HCOs, and processes background checks on all HCO applicants, HCO employees who have access to clients or confidential client information, and HCAs affiliated to HCOs as well as independent HCAs who submit applications. CDSS also maintains a public web-

based registry of all HCAs who have applied, which allows consumers to verify a HCA's registration status by entering an individual's name and identification number. Additionally, unlike other licensure categories, HCOs must renew their licenses and HCAs must renew their registrations every two years.

Consistency:

The CDSS has found these regulations neither inconsistent or incompatible with existing regulations because research was done by program to determine that these are non-duplicating and non-repetitive regulations, and do not negate or overlap other existing regulation or law. Further, these regulations are not duplicative of any federal law.

Benefits:

These emergency regulations promote consumer protection for elderly and disabled individuals who hire private aides to come into their homes and provide assistance with activities of daily living. The regulations establish safe care alternatives in a previously unregulated home care industry, which will allow elderly and disabled individuals to continue to live independently in their homes, the least restrictive environment, and active in their local communities. These regulations aid and protect the health and safety of vulnerable individuals by providing the home care services industry and the public with a clear understanding of the responsibilities of applying for Home Care Organization (HCO) licensure, operating requirements, and requirements for biennial visits. Additionally, these regulations provide guidelines and standards for Home Care Aides (HCAs) who are affiliated to HCOs or who choose to apply independently. The regulations provide health and safety protections for a vulnerable population by requiring HCAs to be background-checked and, if they are employed by a HCO, require tuberculosis screening and annual safety training. Additionally, unlike other licensure categories, HCOs must renew their licenses and HCAs must renew their registrations every two years. Transparency is achieved by the Department listing all HCOs on a public website displaying license number, HCO name, license status, licensee name, physical address, telephone number, and in the near future the website will display all inspection reports, citations, complaints, and other site visit information. HCAs are listed on a public online registry website. Individuals who wish to review a HCA's status can enter the HCA's name and registration number on the public Home Care Aide Registry and receive information on the HCA's registration status. Worker safety has increased because the law now requires that affiliated HCAs are covered under State worker's compensation laws. HCOs are required to hold a ten thousand dollar (\$10,000) surety bond to protect clients from financial loss resulting from a dishonest or fraudulent act. All HCO and HCA applicants are covered under the Departments nondiscrimination policy and may apply for licensure or registration regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, or ancestry. These regulations will have no impact on the State's environment.

Incorporation by Reference:

The following forms are incorporated by reference in their entirety. The forms are not printed in the California Code of Regulations because it would be cumbersome and impractical; however, the forms are listed below and readily available from CDSS at the three following links:

Link to HCS Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/E-H>

Link to LIC Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/I-L>

Link to SOC Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/Q-T>:

HCS 001 (12/15) – Home Care Organization Suboffice Request
HCS 101 (10/17) – Home Care Aide Registration Renewal
HCS 100 (12/15) – Application for Home Care Aide Registration
HCS 200 (08/15) – Application for Home Care Organization License
HCS 215 (08/15) – Home Care Organization Licensee Applicant Information
HCS 308 (08/15) – Designation of Home Care Organization Responsibility
HCS 309 (08/15) – Partnership/Corporation/Limited Liability Company Organization Structure
HCS 402 (12/15) – Home Care Organization Dishonesty Bond
HCS 501 (06/17) – Personnel Record
HCS 9165 (08/15) – Board of Director Statement
LIC 301E (07/03) – Reference Request
LIC 500 (11/2003) – Personnel Report
LIC 508 (07/15) – Criminal Record Statement
LIC 9163 (12/15) – Request for Live Scan Service-Community Care Licensing
LIC 9188 (11/15) – Criminal Record Exemption Transfer Request
SOC 341 A (03/15) – Statement Acknowledging Requirements to Report Suspected Abuse of Dependent Adults and Elders

COST ESTIMATE

As the Home Care Services Consumer Protection Act is a new program, the economic impact is yet to be determined, however, the following information is known to CDSS:

1. Costs or Savings to State Agencies: To support the Home Care Services Program, expenditure authority was included in the Budget Acts of the following respective years; \$1,472,000 for fiscal year (FY) 2014-15, \$5,466,000,000 for FY 2015-16, \$5,584,000 for FY 2016-17 and \$6,583,000 for FY 2017-18. At this point, expenditures for the program are expected to be \$6,353,000 for FY 2018 19 and ongoing.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These emergency regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Due to Home Care Organization (HCO) licenses being issued on a biennial basis (every two (2) years), the Department does not yet have a baseline established to determine how many HCOs have not applied for or will not renew their license for purely economic reasons.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

This regulatory action includes cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action. Private individuals and businesses who participate as or within a Home Care Organization may be subject to various fees for licensure and penalties as described in the legislatively mandated regulations.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that there may be an impact on small businesses as a result of filing these regulations. Currently, CDSS has received approximately 1,700 applications for Home Care Organization licensure and there are approximately 1,500 licensed Home Care Organizations. At this time, the number of unlicensed providers is unknown. The businesses that may be affected are Home Care Organizations that arrange for home care services for clients in the client's own home.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither significantly create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment are as follows: These emergency regulations ensure that CDSS aides and protects the health and safety of vulnerable individuals by regulating a previously unregulated industry. The home care services industry now has a clear understanding of the responsibilities of applying for HCO licensure, operating requirements, and requirements for biennial visits. Additionally, these regulations provide guidelines and standards for HCAs who are affiliated to HCOs or who choose to apply independently. There is no affect to the state's environment.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, the Department considered the following alternatives with the following results:

There have been no alternatives presented to the Department in consideration of these legislatively mandated regulations.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Sections 1522, 1558, 1796.23, 1796.24, 1796.26, 1796.29, 1796.31, 1796.33, 1796.35, 1796.36, 1796.37, 1796.38, 1796.40, 1796.42, 1796.43, 1796.44, 1796.48, 1796.49, 1796.55, and 1796.63 of the Health and Safety (H&S) Code. Subject regulations implement and make specific Sections 1796.12, 1796.19, 1796.21, 1796.22, 1796.23, 1796.24, 1796.25, 1796.26, 1796.28, 1796.29, 1796.31, 1796.32, 1796.33, 1796.35, 1796.36, 1796.37, 1796.38, 1796.40, 1796.41, 1796.42, 1796.44, 1796.45, 1796.47, 1796.48, 1796.49, 1796.51, 1796.52, 1796.53, 1796.55, and 1796.63 of the H&S Code.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person:	Kenneth Jennings	(916) 657-2586
Backup:	Sylvester Okeke	(916) 657-2586

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. To allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.